

09 FEB 2007



UNITED STATES PATENT and TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Katherine Proctor
Gordon & Rees
101 West Broadway
Suite 1600
San Diego CA 92101

In re Application of	:	DECISION ON
ORLITZKY, Anton., et al	:	
Application No.: 10/563,791	:	
PCT No.: PCT/CA2004/000994	:	
Int. Filing Date: 7 July 2004	:	PETITION UNDER
Priority Date: 7 July 2003	:	
Attorney Docket No.: BFETH-1036832	:	
For: REUSABLE FLUID DISPENSER	:	37 CFR 1.182

This is in response to applicants' submission "COMMUNICATION TO EXAMINER AND RESPONSE TO NOTIFICATION OF DEFECTIVE RESPONSE" filed on 13 November 2006, which is being treated as a petition under 37 CFR 1.182. This submission states that the correct inventor's name for the first listed inventor, "Tony ORLITZKY," is "Anton ORLITZKY." The petition fee of \$400.00 has been charged to petitioner's Deposit Account No.: 50-1990.

BACKGROUND

On 06 January 2006, applicants filed in the United States Patent and Trademark Office (PTO) a Transmittal Letter (Form PTO-1390) accompanied by, *inter alia*, the basic national fee. Applicants, however, did not satisfy the requirement set forth by 35 U.S.C. 371(c)(4) because no executed oath or declaration was filed at that time.

On 11 April 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, *inter alia*, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by International application number and international filing date." The notice also indicated that all of the items set forth above must be submitted within two (2) months from the date of this notice or by 32 months from the priority date for the application, whichever is later. Failure to properly respond will result in abandonment.

On 11 August 2006 applicants submitted a "RESPONSE TO MISSING REQUIREMENTS UNDER 35 U.S.C. 371," which included an executed Declaration.

On 13 October 2006, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916).

ON 13 November 2006, applicants responded with the current petition.

DISCUSSION

The correct name of the first joint-inventor is "Anton ORLITZKY." Applicants indicate that the name, Tony, published in the international application was using his nickname because "Tony" is a common short form nickname of "Anton." However, the legal correct name, Anton, appears in the declaration filed to the USPTO. Also the correct spelling of his last name is "ORLITZKY" therefore his correct name "Anton ORLITZKY" will be reflected in the US national stage processing.

Applicants' response is accepted as a sufficient response to the Notification of Missing Requirements (FORM PCT/DO/EO/905) mailed on 19 April 2005, and to NOTIFICATION OF DEFECTIVE RESPONSE" (Form PCT/DO/EO/916) mailed 13 October 2006.

However, for the reason below, the application may not enter into national stage processing at this time.

The declaration filed on 11 August 2006 is defective since it does not comply with 37 CFR 1.497(a)(3). A Declaration, under 37 CFR 1.497(a)(3), must identify each inventor. See MPEP § 602. In this instance, applicants submitted a composite declaration comprising of two sets of declarations, which one is incomplete because each set must be complete by having the correct number of pages and listing all the inventors. In this case only, one set is complete because it comprises of the four (3) pages of the declaration. The other set is incomplete because it appears that page one is missing. Therefore the composite Declaration is incomplete.

Copies of the same page is not part of a proper declaration because it is considered a composite declaration and each must be a complete declaration with the proper statement and the names of each inventor even though each set of declarations may not have all the signatures of the inventors. Therefore, a proper declaration must consist of individual complete sets of declaration that taken as a whole would have all the required signatures as required under 37 CFR 1.497(a)(3).

DECISION

For the reasons above, the petition under 37 CFR 1.182 is **GRANTED**.

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for continued processing consistent with this decision.

A proper response, which is a proper translation and the processing fee, must be filed within ONE (1) MONTH from the mail date of this decision or within the time limit in the response set forth in the Notification of Missing Requirements, whichever is longer. The period for response set in the Notification of Missing Requirements may be extended under 37 CFR 1.136(a).



Rafael Bacares

PCT Legal Examiner

PCT Legal Office

Telephone: (571) 272-3276

Facsimile: (571) 273-0459